

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

GILBERT L. SPURLOCK,

Plaintiff,

V.

CIVIL ACTION NO. 3:07-0124

CONGRESSMAN NICK RAHALL,

Defendant.

FINDINGS AND RECOMMENDATION

Gilbert L. Spurlock has filed a complaint with the Court naming as the defendant Congressman Nick Rahall. In the complaint, his principal grievance stems from what he characterizes as fraudulent billing by a motel in the year 2000, a grievance which has been the subject of prior suits in this Court. He alleges that Congressman Rahall has failed to assist him in his dispute over the billing. The case is presently pending before the Court on application and affidavit of plaintiff seeking leave to proceed in forma pauperis under the provisions of 28 U.S.C. §1915.

Examination of the application and affidavit submitted in support of the request to proceed in forma pauperis establishes plaintiff's eligibility to proceed herein without prepayment of fees. As a consequence of the fact that plaintiff proceeds in forma pauperis, and in accordance with the requirements of 28 U.S.C. §1915(e)(2)(B), however, the Court is required to dismiss a case if it determines that the action is "frivolous or malicious" or the complaint "fails to state a claim on which relief may be granted." Patently, the claim of failure to assist under the circumstances

described in the complaint is frivolous. Moreover, the complaint clearly fails to state any legally cognizable claim. As a consequence, Gilbert L. Spurlock's complaint and this action should be dismissed.

RECOMMENDATION

On the basis of the foregoing, it is **RESPECTFULLY RECOMMENDED** that plaintiff's application to proceed in forma pauperis be granted and that his complaint, and this action be dismissed.

Plaintiff is hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert C. Chambers, United States District Judge, and that, in accordance with the provisions of Rule 72(b), Fed.R.Civ.P., the parties may, within thirteen days from the date of filing of these Findings and Recommendation, serve and file written objections with the Clerk of this Court identifying the portions of the Findings and Recommendation to which objection is made and the basis for such objection. The Judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and plaintiff is advised that failure to file timely objections will result in a waiver of his right to appeal from a judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Chambers and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and mail a copy of the same to plaintiff and the named parties.

DATED: May 25, 2007



MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE